

§ 355.3

Corporation (or any interest in said Corporation in excess of 25%)³ conferred upon or permitted to be exercised by any person who is not a citizen of the United States; and

6. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

Dated: _____

(Name of affiant)

Subscribed and sworn to before me, a Notary Public in and for the State and County aforesaid, this _____ day of _____, 19____.

(Notary Public)

My Commission expires: _____

PENALTY FOR FALSE STATEMENT: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. 1001 (see also 18 U.S.C. 286, 287).

(Approved by the Office of Management and Budget under control number 2133-0012)

[G.O. 89, Rev., 35 FR 11558, July 18, 1970, as amended at 35 FR 11686, July 22, 1970; 47 FR 25530, June 14, 1982; 69 FR 34311, June 21, 2004]

§ 355.3 Criteria to be applied in support of stock data in affidavit.

(a) The same criteria should be observed in obtaining information to be furnished for stockholders named (direct ownership of required percentage of shares of stock of each class or series) in the Affidavit as those observed for the primary corporation. If, on the other hand, the "fair inference rule" is applied with respect to stock ownership (see Collier Advertising Service, Inc. v. Hudson River Day Line, 14 Fed. Supp. 335), the extent of U.S. citizen ownership of stock should be ascertained in the requisite percentage (65 percent for foreign operation and 95 percent for coastwise operation) in order that the veracity of the statutory statements made in the Affidavit (paragraph 5) may be relied upon by the Maritime Administration.

(b) When applying the fair inference rule (where there are more than 30 stockholders, except where one or more of such number actually owns the controlling or 75 percent interest) in order to prove U.S. citizen ownership in the required percentages (1) for foreign operation, 65 percent of the shares of

46 CFR Ch. II (10-1-06 Edition)

stock of each class or series must be shown to be held by persons with registered addresses within the United States to prove that 51 percent or controlling interest is vested in citizens of the United States and (2) for coastwise operation, 95 percent of the shares of stock of each class or series must be shown to be held by persons having registered addresses within the United States to prove that 75 percent of the interest in the corporation is vested in citizens of the United States.

(c) If the primary corporation is consecutively owned by several "parent" corporations (holders of 100 percent of the stock of each or all classes or series of stock issued and outstanding), the facts should be given in proper sequence either by chart or in narrative form, revealing the facts of stock ownership. The information with respect to the ultimate parent should include data relative to the basis upon which controlling or 75 percent (depending upon whether the primary corporation operates in the domestic or foreign commerce) is established, together with the names of the owners of record or beneficial owners of 5 percent or more of each class or series of stock, if more than one class or series, and statement that such owners are citizens of the United States. In any case where different classes or series of stock exist, each class or series shall be treated depending upon whether "closely held" or "publicly held," individually in applying the fair inference rule, if applicable, or giving the relevant information with respect to United States citizens owning of record 51 percent or 75 percent of the interest.

§ 355.4 Changes in citizenship data.

It shall be incumbent upon the parties filing affidavits under this part to apprise the Maritime Administration promptly in writing relative to changes in data last furnished with respect to officers, directors, and stockholders holding 5 percent or more of the issued and outstanding stock of each class or series, together with statements concerning the citizenship status thereof.

§ 355.5 Additional material.

If additional material is determined to be essential to clarify or support the

Maritime Administration, DOT

§ 356.1

evidence of U.S. citizenship, such material shall be furnished by the aforementioned primary corporation upon request by the Maritime Administration.

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

Subpart A—General Provisions

Sec.

356.1 Purpose.

356.2 Waivers.

356.3 Definitions.

Subpart B—Ownership and Control

356.5 Affidavit of U.S. Citizenship.

356.7 Methods of establishing ownership by United States Citizens.

356.9 Tiered ownership structures.

356.11 Impermissible control by a Non-Citizen.

Subpart C—Requirements for Vessel Owners

356.13 Information required to be submitted by vessel owners.

356.15 Filing of affidavit of U.S. Citizenship.

356.17 Annual requirements for vessel owners.

Subpart D—Mortgages

356.19 Requirements to hold a Preferred Mortgage.

356.21 General approval of standard loan or mortgage agreements.

356.23 Restrictive loan covenants approved for use by lenders.

356.25 Operation of Fishing Industry Vessel by Mortgagees.

Subpart E—Mortgage Trustees

356.27 Mortgage Trustee requirements.

356.31 Maintenance of Mortgage Trustee approval.

356.37 Operation of a Fishing Industry Vessel by a Mortgage Trustee.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

356.39 Charters.

356.41 Management agreements.

356.43 Long-term or exclusive sales contracts.

356.45 Advance of funds.

Subpart G—Special Requirements for Certain Vessels

356.47 Special requirements for large vessels.

356.49 Penalties.

356.51 Exemptions for specific vessels.

Subpart H—International Agreements

356.53 Conflicts with international agreements.

Subpart I—Review of Harvesting and Processing Compliance

356.55 Review of compliance with harvesting and processing quotas.

AUTHORITY: 46 U.S.C. 12102; 46 U.S.C. 31322; Pub. L. 105-277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107-20, section 2202, 115 Stat. 168-170; 49 CFR 1.66.

SOURCE: 65 FR 44877, July 19, 2000, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 356 appear at 68 FR 5576, Feb. 4, 2003.

Subpart A—General Provisions

§ 356.1 Purpose.

(a) Part 356 implements the U.S. Citizenship requirements of the American Fisheries Act of 1998, as amended, Title II, Division C, Public Law 105-277, for owners, Mortgage Trustees, and Mortgagees of vessels of 100 feet or greater in registered length that have a fishery endorsement to the vessel's documentation or where a fishery endorsement to the vessel's documentation is being sought. This part also addresses ancillary matters of charters, management agreements, exclusive sales or marketing contracts, conflicts with international agreements, determinations regarding violations of harvesting or processing limits, and exceptions for certain vessels, vessel owners and Mortgagees from the general requirements of the rule.

(b) An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid